

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

FILED
JAN 8 - 2007
U.S DISTRICT COURT
MARTINSBURG, WV 25401

UNITED STATES OF AMERICA,

Plaintiff,

CRIMINAL NO. 3:94CR143

DONALD W. DENMARK,

Defendant.

REPORT AND RECOMMENDATION

On January 3, 2007, this matter came before the Court for a hearing on the Petition for Warrant or Summons for Offender Under Supervision. The defendant was present in person and by counsel Brian Crockett. Assistant United States Attorney Thomas Mucklow and United States Probation Officer Jocelyn Petsko appeared on behalf of the United States.

PROCEDURAL HISTORY

On August 4, 1995, the defendant was sentenced to a term of incarceration of seventy (70) months to be followed by five (5) years of supervised release. On July 21, 2003, the Court revoked defendant's supervision. As a result of this revocation, the Court sentenced the defendant to an additional eight (8) months incarceration followed by a three (3) year period of supervised release. On July 19, 2006, United States Probation Officer Jocelyn Petsko submitted the instant petition, alleging that the defendant violated three (3) conditions of supervision. As noted in the petition (Doc. No. 97), Mrs. Petsko recommended that the defendant's term of supervision be revoked. The Honorable W. Craig Broadwater signed the petition on July 21, 2006, and a warrant was issued for the defendant's arrest. Subsequently, the defendant was arrested and detained pending a hearing on

the petition.

DISCUSSION

As an initial matter, the Court confirmed that the defendant examined the petition and the alleged violations with his attorney. After the Court's inquiry, the parties indicated that they had reached an agreement regarding disposition of the allegations. Pursuant to the agreement, the defendant would serve a twenty (20) month term of incarceration with no supervision to follow in exchange for his admission to violation number one (1) contained in the petition. Additionally, the parties agreed that the remaining balance of the fine imposed by defendant's original sentence should be waived due the defendant's financial status and his good faith efforts to satisfy the obligation.

Before accepting the agreement, the Court informed the defendant of the rights given up by his decision to enter a plea of guilty. In response, the defendant indicated his desire to waive his due process rights and enter a plea pursuant to the agreement. As such, the Court accepted the defendant's waiver and his admission to violation number one (1) of the petition; that defendant shall not commit another federal, state, or local crime while on supervised release.

FINDINGS OF FACT AND CONCLUSIONS

This Court recommends the following findings of fact based upon clear and convincing proof from the uncontested and admitted allegations contained in the petition:

1. The defendant knowingly and voluntarily waived his rights and admitted guilt to violation number one (1) contained in the petition.
2. On May 30, 2006, during the period of supervised release, the defendant plead guilty to the delivery of cocaine in the Circuit Court of Hampshire County, West Virginia. Furthermore, this action constituted a violation of a mandatory condition of the

defendant's supervised release.

3. There is a preponderance of evidence establishing the defendant violated the mandatory condition of his supervised release prohibiting the commission of another federal, state, or local crime.
4. The defendant and the United States have agreed that the defendant shall serve twenty (20) months in the Bureau of Prison's custody with no supervision to follow. Additionally, the parties agreed that the balance of defendant's fine from his original sentence should be waived.

RECOMMENDATIONS

This Court respectfully recommends the following:

1. The defendant's supervised release be revoked.
2. The district court should adopt the plea agreement and sentence the defendant to twenty (20) months incarceration with no supervision to follow.
3. The district court recommend that the defendant be given credit for time served from December 6, 2006.
4. The district court recommend that the defendant receive appropriate medical treatment while under the custody of the Bureau of Prisons for his various medical conditions.
5. The district court waive the \$5,600 balance of the fine imposed by defendant's original sentence.

Any party may, within ten (10) days after being served with a copy of this Report and Recommendation, file with the Clerk of the Court written objections identifying the portions of the

Report and Recommendation to which objection is made, and the basis for such objection. A copy of such objections should also be submitted to the Honorable Irene M. Keeley, Chief United States District Judge. Failure to timely file objections will result in waiver of the right to appeal from a judgment of this Court based upon such report and recommendation. 28 U.S.C. §636(b)(1); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); Thomas v. Arn, 474 U.S. 140 (1985).

The Clerk is directed to transmit true copies of this Report and Recommendation to the defendant and all counsel of record herein.

DATED this 4th day of January, 2007.



DAVID J. JOEL
UNITED STATES MAGISTRATE JUDGE